

PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEWDocket Number (Optional)
100201747-1
(HDP#6215-000130/US)

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On _____

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Application Number
09/664,499Filed
09/18/2000First Named Inventor
Nicos A. VEKIARIDESArt Unit
2157Examiner
H. A. EL CHANTI

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages of attachments are provided.

I am the

☐ applicant/inventor

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

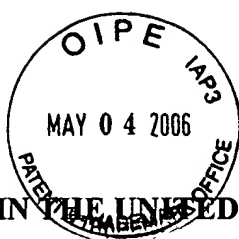
☐ attorney or agent of record.
Registration number. _____

☒ attorney or agent acting under 37 CFR 1.34.
Registration number: 37,275


SignatureThomas S. Auchterlonie / Reg. No. 37,275
Typed or printed name703-688-8000
Telephone numberMay 4, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/664,499
Appellant(s): Nicos A. VEKIARIDES
Filing Date: September 18, 2000
Conf. No.: 4607
Group Art Unit: 2157
Examiner: El Chanti, Hussein A.
Title: INTERNET PROTOCOL DATA MIRRORING
Attorney Docket No.: 100201747-1

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May 4, 2006

ATTACHMENT TO FORM PTO/SB/33
(DETAILS OF PRE-APPEAL BRIEF REQUEST FOR REVIEW)

Sir:

Further to the concurrent filing of the attached Notice of Appeal, the following remarks are submitted in connection with the above-identified patent application under the Pilot Program for Pre-Appeal Brief Conference (Off. Gaz. Patent & Trademark Office, Vol. 1296, No. 2, July 12, 2005).

Claims 1-24 and 26-49 are pending. Of those, claims 1, 24, 32, 39 and 48-49 written in independent format. Previously, 25 was canceled

Rejection For Which Conference Is Requested

A Pre-Appeal-Brief Conference is requested to review the rejection¹ of claims 1-21, 24 and 26-43. Appellant disagrees with this rejection, for the reasons given previously², and for the following additional reasoning as it relates more particularly, e.g., to independent claim 1.

¹ The statement of rejection spans pages 2-14 of the Final Office (mailed January 30, 2006).

² See reply by Appellant filed November 14, 2005, pages 14-15.

ADDITIONAL TRAVERSAL REASONING

For simplicity, this additional traversal reasoning assumes the context of independent claim 1, taken as an example claim.

On page 16 of the Final Office Action, the Examiner present's rebuttal arguments. Specifically, the Examiner states:

Applicant argues in substance that Nelson ['863 patent] does not disclose [a] heartbeat signal and the "are-u-active message" taught by Nelson ['863 patent] may not be interpreted as [a] heartbeat signal.

The Examiner has misunderstood Appellant's argument. This may be due to the Examiner dismissing some parts of Appellant's claim language.

Claim 1, recites more than merely sending a first heartbeat signal and a second heartbeat signal. In addition, claim 1 further recites monitoring reception of the first heartbeat signal and the second heartbeat signal for interruption. As Appellant explained in the previous reply, the latter feature of monitoring for interruption the reception of the first and second heartbeat signals represents a distinction over the applied U.S. Patent No. 5,574,863 (the '863 patent) to Nelson et al.

In his rebuttal, the Examiner directs Appellants attention to col. 6, lines 20-30 of the '863 patent; that passage is reprinted here for the reader's convenience:

Message number 1, ARE-YOU-ACTIVE, is a message sent by the Slave controller to the Master as a heartbeat message (sent periodically) and used by the slave to detect when the master has failed. If the Master is still active and communicating, its only response is YES-ACTIVE, which indicates all is in order. On the other hand, if the Master recognizes that it is no longer serving as Master or is no longer able to serve as Master, its only response is NO-INACTIVE. Given either of these specific, unambiguous replies in response to the specific, unambiguous request, each controller knows exactly what action to take.

The above-quoted passage of the '863 patent teaches that the Slave uses Message No. 1 "to detect when the Master has failed." **Question:** How does the Slave detect failure? **Answer:** In

one of two ways. First, if the Slave receives a "NO_ACTIVE" message that was sent in reply to Message No. 1, then the Slave knows that the Master has failed. This is apparent from the above-quoted passage.

The second way that the Slave detects failure is described in the paragraph immediately following the above-quoted passage, namely in col. 6, lines 31-40 of the '863 patent; that passage is reprinted here for the reader's convenience:

Message number 2, TIMEOUT-I'M-BECOMING-MASTER, is a message sent by the Slave when it detects that a timeout has occurred, i.e., the Master has not replied within a given time period (which is directly related to the rate of the timer based polling of messages). The only response the Master can reply with is OK-BECOMING-SLAVE, meaning the Slave will then become the Master. Alternatively, the Master may not be able to respond due to some failure, and the Slave becomes Master anyway in recognition of the failure to respond.

For certain message types that the Master and Slave respectively are able to send, each expects to receive a reply within a timeout interval. If no reply is received before the timeout interval elapses,, then the Master/Slave treats this as being the same as having received a negative reply, and initiates action appropriate to the circumstances; see col. 5, lines 3-22. Based upon the above-quoted lines 31-40 of the '863 patent, Message No. 1 is one of the messages for which the Slave expects to receive a reply within a fixed amount of time. If that reply is not received before a timeout interval elapses, then the Slave infers from the circumstances that the Master has failed.

The Examiner has interpreted Message No. 1 (again, sent by the Slave) as the first heartbeat signal and the reply to it (that is sent by the Master) as the second heartbeat signal.

Based upon the above-quoted second passage (lines 31-40) and the '863 patent as a whole, it should be clear that the signal whose reception is monitored for interruption is not Message No. 1, rather it is the Master's reply message for which the Slave monitors reception for interruption. Appellant will assume for the sake of argument that the Slave's monitoring reception of the Master's reply to Message No. 1 corresponds to the claimed monitoring reception of the second heartbeat signal for interruption.

Appellant's claim 1, however, also recites monitoring for interruption the reception the first heartbeat signal. Under the continued assumption for the sake of argument that the sending of message No. 1 by the Slave represents the first heartbeat signal, Appellants ask the **question**: Where does the '863 patent suggest (much less teach) that the Master monitors for interruption the reception of Message No. 1 from the Slave? **Answer**: Nowhere.

In view of the foregoing discussion, the rejection of claim 1 is improper because the '863 patent does not teach all elements of claim 1.

The other claims discussed by this rejection similarly distinguish over the applied art.³

§103 REJECTIONS

A Pre-Appeal-Brief Conference also is requested to review the rejections under 35 U.S.C. §103(a). Beginning on page 15 of the Office Action, claim 22 is rejected under as being unpatentable over the '863 patent taken alone, while claims 23 and 44-47 are rejected over the '863 patent in view of U.S. Patent No. 6,633,587 (the '587 patent) to Bennett. Appellant traverses.

The '587 patent has not been cited as a teaching of the distinction over the '863 patent asserted above. Nor would it be reasonable to assert that it suggests, much less discloses, the above-noted distinction.

Claims 22-23 and 44-47 depend from claims 1, 24, 32 and 39 and exhibit at least the above-noted distinctions of claims 1, 24, 32 and 39, respectively.

In view of the foregoing discussion, the § 103(a) rejections based the '863 patent taken alone or in combination with the '587 patent are improper. Respective withdrawal of the rejections is requested.

³ Independent claim 24, independent claim 32 and amended independent claim 39 recite features similar to claim 1 and thus similarly distinguish over the '863 patent, respectively. Claims 2-21, 26-31, 33-38 and 40-43 depend from base claims 1, 24, 32 and 39 and exhibit at least the same distinction as their base claims, respectively.

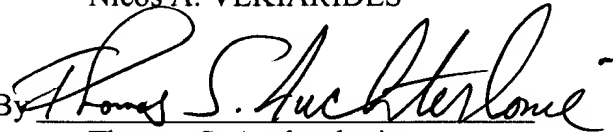
CONCLUSION

In view of the above remarks, Appellant requests the Pre-Appeal Brief Conference to find in favor of Appellant's positions and arrange for withdrawal of the above-noted rejections, culminating in the sending of a Notice of Allowance of the pending claims.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-2025 for any additional fees under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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